

REMARKS

Applicant appreciates the Examiner's thorough consideration provided in the present application. Claims 1-12 are currently pending in the instant application. Claims 1-4, 6, and 9-12 have been amended. Claims 1, 2, 4, 6, and 10-12 are independent. Reconsideration of the present application is earnestly solicited.

Allowable Subject Matter

Applicant appreciates the Examiner's indication of allowable subject matter. Specifically, claims 4 and 10-12 have been allowed and the subject matter of claims 8 and 9 has been indicated as being allowable if rewritten in independent format.

Claim Rejections Under 35 U.S.C. § 102

Claims 1-3 and 5 have been rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Lee (U.S. Patent No. 5,546,134). Claim 6 has been rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Yoshida et al. (U.S. Patent Publ. No. 2004/0165070) in view of Christoff et al. (U.S. Patent No. 6,518,998). Claim 7 has been rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Yoshida et al. in view of Christoff et al., and further in view of Eino (U.S. Patent No. 6,120,435). These rejections are respectfully traversed.

Initially, it is noted that the Office Action does not give patentable weight to the language in claims 1, 2, and 6 that the Examiner deems to be functional.

In response, the Applicant respectfully submits that the Examiner's position with respect to claim limitations of claims 1, 2, and 6 is improper.

Nonetheless, while not conceding the appropriateness of the Examiner's rejection, but merely to advance the prosecution of the present invention, independent claim 1 has been amended to recite a combination of elements directed to a camera, including *inter alia*

an imaging part adapted to capture an image;

a displaying device adapted to display the image,

wherein the camera is adapted to determine a brightness level of video signals obtained by the imaging part, adapted to automatically correct the video signals according to the determined brightness level, and adapted to output the corrected video signals to the displaying device, and

wherein the camera is adapted to automatically correct the video signals according to the determined brightness level without lowering an SN ratio.

In addition, independent claim 2 has been amended to recite a combination of elements directed to a camera, including *inter alia*

an imaging part including an imaging device;

a signal processing part adapted to process video signals outputted from the imaging part;

a brightness determining part adapted to receive the video signals outputted from the signal processing part and adapted to determine a brightness level of the received video signals;

a correction amount determining part adapted to determine a correction amount for the video signals according to the brightness level of the video signals determined by the brightness determining part;

a correcting part adapted to automatically correct the video signals according to the correction amount determined by the correction amount determining part, wherein the correcting part is adapted to correct the video signals according to the determined brightness level from the brightness determining part without lowering an SN ratio; and

an outputting part adapted to output the video signals corrected by the correcting part to a displaying device.

Further, independent claim 6 has been amended to recite a combination of elements directed to a camera, including *inter alia*

- an image signal processing circuit having

- an A/D converter for converting analog image signals from the imaging device into digital image signals,

- a gamma correcting circuit,

- a YC signal generating circuit adapted to perform gamma processing and chroma signal processing on the digital image signals, and

- a D/A converter adapted to convert the digital image signals into analog image signals;

- a display device controlling circuit adapted to output the analog image signals to a displaying device according to the analog image signals output from the image signal processing circuit; and

- a microcomputer operatively connected to an EEPROM,

- wherein said microcomputer is adapted to control the diaphragm according to the digital image signals from the image signal processing circuit, adapted to send shutter speed control signals to the imaging device for controlling camera shutter speed, and adapted to automatically determine if a determined brightness level of the digital image signals is lower than a predetermined value, and

- wherein said microcomputer is adapted to obtain a correction value from the EEPROM according to the determined brightness level of the digital image signals and to output a command control signal to the image signal processing circuit for automatic

correction processing of the digital image signals without lowering an SN ratio and before the digital image signals are converted into the analog image signals by the D/A converter.

With the changes to independent claims 1, 2, and 6, as described above, the Applicant respectfully submits that each of amended independent claims 1, 2, and 6 positively recites a combination of structural features.

In this regard, the Applicant refers the Examiner to the attached decision by the Court of Customs and Patent Appeals in In re Venezia, 189 USQ 149 (CCPA 1976).

In that case, a number of claims were presented. Claim 31 with emphasis, was representative of the claims on appeal and reads as follows:

31. A splice connector kit having component parts *capable of being assembled* in the field at the terminus of high voltage shielded electrical cables for providing a splice connection between first and second such cables, said cables each having a conductor surrounded by an insulating jacket within a conductive shield wherein a portion of the conductive shield is removed to expose the insulating jacket and a portion of the insulating jacket is removed to expose the conductor at the terminus of the cable, the kit comprising the combination of:

a pair of sleeves of elastomeric material, each sleeve of said pair *adapted to be fitted* over the insulating jacket of one of said cables, each said sleeve having an external surface and a resiliently dilatable internal bore for gripping the insulating jacket to increase the dielectric strength of the creep path along the insulating jacket;

electrical contact means *adapted to be affixed* to the terminus of each exposed conductor for joining the conductors and making an electrical connection therebetween;

a pair of retaining members *adapted to be positioned* respectively between each of said sleeves fitted over the insulating jacket of each said cable and the corresponding terminus of each said cable, said retaining members each having means cooperatively associated therewith for maintaining each said member's position relative to the insulating jacket on each said cable and for precluding axial movement of the sleeve toward the corresponding terminus of each said cable; and

a housing, said housing having an internal bore extending therethrough from end to end, said housing including portions adjacent each end thereof defining said internal bore and being resiliently dilatable *whereby said housing may be slideably positioned over one of said cables and then slideably repositioned over said sleeves*, said retaining members, and said contact means *when said sleeves, said retaining members and said contact means are assembled* on said cables as hereinaforesaid, said resiliently dilatable portions of said housing respectively gripping the corresponding external surface of each said sleeve in watertight sealing relationship therewith and said housing having a further portion intermediate its ends defining said internal bore and forming a sealed chamber enclosing at least said contact means and the exposed portions of said cable conductors *when said housing is in its repositioned location*.

The Court reviewed the disputed claims and in particular the language criticized by the Examiner and the Board, and concluded that the claims do define the metes and bounds of the claimed invention with a reasonable degree of precision and particularly, and that they are, therefore, definite as required by the second paragraph of section 112. As the Court viewed these claims, they precisely define a group or "kit" of interrelated parts. The Court continued by stating:

These interrelated parts may or may not be later assembled to form a completed connector. But what may or may not happen in the future is *not* a part of the claimed invention. The claimed invention does include present structural limitations on each part, which structural limitations are defined by how the parts are to be interconnected in the final assembly, if assembled. However, this is not to say that there is anything futuristic or conditional in the "kit" of parts itself. For example, paragraph two of claim 31 calls for "a pair of sleeves * * * each sleeve of said pair *adapted to be fitted* over the insulating jacket of one of said cables." Rather than being a mere direction of activities to take place in the future, this language imparts a structural limitation to the sleeve. Each sleeve is so structured or dimensioned that it can be fitted over the insulating jacket of a cable. A similar situation exists with respect to the "adapted to be affixed" and "adapted to be positioned" limitations in the third and fourth paragraphs of the claim. The last paragraph of claim 31 contains additional language criticized by the board, including "may be slideably positioned," "slideably

repositioned," "when said sleeves * * * are assembled," and "when said housing is in its repositioned location." However, this language also defines present structures or attributes of the part of the "kit" identified as the housing, which limits the structure of the housing to those configurations which allow for the completed connector assembly desired. Again, a present structural configuration for the housing is defined in accordance with how the housing interrelates with the other structures in the completed assembly. We see nothing wrong in defining the structures of the components of the completed connector assembly in terms of the interrelationship of the components, or the attributes they must possess, in the completed assembly. More particularly, we find nothing indefinite in these claims. One skilled in the art would have no difficulty determining whether or not a particular collection of components infringed the collection of interrelated components defined by these claims. In re Miller, supra.

In view of the above, the Applicant respectfully submits that each of independent claims 1, 2, and 6, as amended, properly and positively recites a combination of structural features.

Further, the Examiner has acknowledged that Lee does not perform correction of the video signals without lowering a SN ratio. In addition, as best understood by the Applicant, neither of Yoshida et al. and Christoff et al. teach or suggest a camera adapted to correct the video signals without lowering a SN ratio.

As identified by the Examiner, each of the references cited by the Examiner, including, Lee, Yoshida et al., and Christoff et al., fails to teach or suggest each and every claimed limitation of independent claims 1, 2, and 6. Accordingly, these rejections should be withdrawn. Therefore, reconsideration and withdrawal of the claim rejections are respectfully requested.

As to the dependent claims, Applicant respectfully submits that these claims are allowable due to their dependence upon an allowable independent claim, as well as for additional limitations recited by these claims. The Examiner will note that dependent claims 3 and 9 have been amended merely to place them in better form.

Accordingly, independent claim 1, 2, 6, and dependent claims 3, 5, and 7-9 which are now in condition for allowance.

None of the amendments to any of the claims should be considered narrowing claim amendments.

Amendments to Allowed claims 4 and 10-12

The Examiner will note that independent claims 4 and 10-12 have been amended merely to correct minor informalities and to place them in better form. No changes have been made that would effect the allowability of any of allowed claims 4 and 10-12.

Accordingly, all of the claims of the present application should be allowed.

CONCLUSION

All the stated grounds of rejection have been properly traversed and/or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently pending rejections and that they be withdrawn.

It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

In the event there are any matters remaining in this application, the Examiner is invited to contact Carl T. Thomsen, Registration No. 50,786 at (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: **FEB 17 2006**

Respectfully submitted,

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LEXSEE 189 U.S.P.Q. (BNA) 149

IN THE MATTER OF THE APPLICATION OF J. WILLIAM VENEZIA

Patent Appeal No. 75-601

UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

530 F.2d 956; 1976 CCPA LEXIS 186; 189 U.S.P.Q. (BNA) 149

March 11, 1976, DECIDED.

PRIOR HISTORY: [**1] Serial No. 31,500.

OPINIONBY:

LANE

OPINION: [*956]

LANE, Judge.

This is an appeal from the decision of the Patent and Trademark Office Board [*957] of Appeals (board) affirming the rejections of claims 31 through 36 in application serial No. 31,500, filed April 24, 1970, for "Method of Splicing High Voltage Shielded Cables and Splice Connector Therefor." We reverse.

The Invention

Appellant's invention is a splice connector having interrelated parts adapted to be assembled in the field to provide a splice connection between a pair of high voltage shielded electric cables.

Appellant's application contains claims drawn to the completed connector and to the method of making the splice connection, which have been allowed by the Patent and Trademark Office. On appeal before us are claims drawn to a splice connector "kit" consisting of the parts which are used in making the splice in their unassembled condition.

Claim 31, with our emphasis, is representative of the claims on appeal:

31. A splice connector kit having component parts capable of being assembled in the field at the terminus of high voltage shielded electrical cables for providing a splice connection between [**2] first and second such cables, said cables each having a conductor surrounded by an insulating jacket within a conductive shield

wherein a portion of the conductive shield is removed to expose the insulating jacket and a portion of the insulating jacket is removed to expose the conductor at the terminus of the cable, the kit comprising the combination of:

a pair of sleeves of elastomeric material, each sleeve of said pair adapted to be fitted over the insulating jacket of one of said cables, each said sleeve having an external surface and a resiliently dilatable internal bore for gripping the insulating jacket to increase the dielectric strength of the creep path along the insulating jacket;

electrical contact means adapted to be affixed to the terminus of each exposed conductor for joining the conductors and making an electrical connection therebetween;

a pair of retaining members adapted to be positioned respectively between each of said sleeves fitted over the insulating jacket of each said cable and the corresponding terminus of each said cable, said retaining members each having means cooperatively associated therewith for maintaining each said member's position relative [**3] to the insulating jacket on each said cable and for precluding axial movement of the sleeve toward the corresponding terminus of each said cable; and

a housing, said housing having an internal bore extending therethrough from end to end, said housing including portions adjacent each end thereof defining said internal bore and being resiliently dilatable whereby said housing may be slideably positioned over one of said cables and then slideably repositioned over said sleeves, said retaining members, and said contact means when said sleeves, said retaining members and said contact means are assembled on said cables as hereinaforesaid, said resiliently dilatable portions of said housing respectively gripping the corresponding external surface of each said sleeve in watertight sealing relationship therewith and said housing having a further portion in-

intermediate its ends defining said internal bore and forming a sealed chamber enclosing at least said contact means and the exposed portions of said cable conductors when said housing is in its repositioned location.

The Rejections

Claims 31-36 were rejected under 35 USC 112, second paragraph, as indefinite and incomplete in not defining [**4] a complete article of manufacture. The examiner particularly relied on *In re Collier*, 55 CCPA 1280, 397 F.2d 1003, 158 USPQ 266 (1968), as support for this rejection.

Claims 31-36 were additionally rejected under 35 USC 101 because they were drawn to a plurality of separately and discretely listed and defined manufactures instead of a manufacture. [*958]

The Board

The board at first unanimously sustained both of the above rejections. With respect to the section 112 rejection it stated:

In the Collier case, the two elements [see bracketed elements [1] and [2] of Collier claim 17, *infra*] recited specifically in the claims there under consideration were described in terms of intended uses and capability, and the like. The Court said:

"We agree with the Board, however, that the claim does not positively recite structural relationships of the two elements, identified as (1) and (2) above, in its recitation of what may or may not occur. In this sense it fails to comply with section 112, [second paragraph] In [sic] failing distinctly to claim what appellant in his brief insists is his actual invention."

An inspection of the claims here under consideration, [**5] see for example claim 31 above, discloses a similar situation. Although the preamble refers to the structure as a "kit", the elements are recited without present cooperation. The language is futuristic and conditional in character, thus, a pair of sleeves - to be fitted - electrical contact means - to be affixed - a pair of retaining numbers [sic, members] - to be positioned - a housing - may be slideably positioned - slideably repositioned - when said sleeves are assembled on said cables - when said housing is in its repositioned location.

From the above it is clear that the language of the claim taken as an example is directed to assembly to take place in the future. No present positive structural relationships are recited.

In affirming the section 101 rejection the board stated:

[Appellant] urges that the elements of his claimed combination are "joined together in a kit of component parts". Such joining as may be recited in the claims, as we have pointed out above in connection with the rejection under 35 USC 112, relates to matters which may take place in the future. No present coaction is recited. The presence of the word "kit" in the preamble, we do not think [**6] fairly links the elements separately recited in the claims. Appellant has referred to no language in the claims which would support such "joining" and we know of none. [Emphasis in original.]

In a subsequent decision, upon reconsideration, one of the board members dissented, finding that appellant had distinctly claimed what he regarded as his invention under section 112. The dissenting member of the board also found that it was not fatal under section 101 that the cooperation of the claimed elements was recited as occurring at a future time.

This posture of the board remained intact following a third opinion rendered after a second request for reconsideration by appellant.

OPINION

Section 112 Rejection

We have reviewed the disputed claims and in particular the language criticized by the examiner and the board. We conclude that the claims do define the metes and bounds of the claimed invention with a reasonable degree of precision and particularity, and that they are, therefore, definite as required by the second paragraph of section 112. *In re Conley*, 490 F.2d 972, 180 USPQ 454 (CCPA 1974); *In re Miller*, 58 CCPA 1182, 441 F.2d 689, 169 USPQ 597 (1971); *In re Borkowski*, [**7] 57 CCPA 946, 422 F.2d 904, 164 USPQ 642 (1970). As we view these claims, they precisely define a group or "kit" of interrelated parts. These interrelated parts may or may not be later assembled to form a completed connector. But what may or may not happen in the future is not a part of the claimed invention. The claimed invention does include present structural limitations on each part, which structural limitations are defined by how the parts [*959] are to be interconnected in the final assembly, if assembled. However, this is not to say that there is anything futuristic or conditional in the "kit" of parts itself. For example, paragraph two of claim 31 calls for "a pair of sleeves ... each sleeve of said pair adapted to be fitted over the insulating jacket of one of said cables." Rather than being a mere direction of activities to take place in the future, this language imparts a structural limitation to the sleeve. Each sleeve is so structured or dimensioned that it can be fitted over the insulating jacket of a cable. A similar situation exists with respect to the "adapted to be affixed" and "adapted to be positioned" limitations in the third and fourth paragraphs of [**8] the claim. The

last paragraph of claim 31 contains additional language criticized by the board, including "may be slideably positioned," "slideably repositioned," "when said sleeves ... are assembled," and "when said housing is in its repositioned location." However, this language also defines present structures or attributes of the part of the "kit" identified as the housing, which limits the structure of the housing to those configurations which allow for the completed connector assembly desired. Again, a present structural configuration for the housing is defined in accordance with how the housing interrelates with the other structures in the completed assembly. We see nothing wrong in defining the structures of the components of the completed connector assembly in terms of the interrelationship of the components, or the attributes they must possess, in the completed assembly. More particularly, we find nothing indefinite in these claims. One skilled in the art would have no difficulty determining whether or not a particular collection of components infringed the collection of interrelated components defined by these claims. *In re Miller, supra*.

We also fail to see any basis [**9] for rejecting appellant's claims for being incomplete in failing to recite a completed assembly. Appellant's invention is a "kit" of parts which may or may not be made into a completed assembly. Since all of the essential parts of the "kit" are recited in the claims, there is no basis for holding the claims incomplete.

We cannot leave our discussion of the section 112 rejection without discussing *In re Collier, supra*, relied on by both the examiner and the board as support for this rejection. In *Collier* we were confronted by the following claim:

17. For use in a ground connection,

[1] a connector member for engaging shield means of a coaxial cable means,

said connector member comprising a substantially rectangular piece of metal formed into trough form to define a ferrule-forming member, said ferrule-forming member having

a series of perforations disposed therein toward the axis of the ferrule-forming member and defining inwardly directed frusto-conical projections having jagged edges defining lances converging toward their tips,

said ferrule-forming member being crimpable onto said shield means with said lances keying into said shield means without penetrating insulation [**10] means disposed thereunder,

[2] and ground wire means for disposition between said ferrule-forming member and said shield means upon

the ferrule-forming member being crimped onto the shield means,

said ground wire means being displaced in a series of bights around respective perforations to effect serpentine form when said ferrule-forming member is crimped onto said shield means. [55 CCPA at 1281-82, 397 F.2d at 1004-05, 158 USPQ at 267. (Emphasis and brackets in original opinion).]

In *Collier* appellant argued that we were to regard the italicized portions of claim 17 about intended uses, capabilities, and structures which would result upon the performance of future acts, as positive structural limitations. However, we found that the claim did not positively recite any structural relationship between the two elements identified as [1] and [2], in its recitation of what may or may not occur. We concluded that the [*960] claim failed to comply with section 112, second paragraph, in "failing distinctly to claim what appellant in his brief insists is his actual invention."

There is no issue in this case of whether appellant is claiming what he regards as his invention. [**11] Moreover, although the claims before us contain some language which can be labeled "conditional," this language, rather than describing activities which may or may not occur, serves to precisely define present structural attributes of interrelated component parts of the "kit," such that a later assembly of the "kit" of parts may be effected. Thus, we find *In re Collier* inapposite to the claims presently before us.

Section 101 Rejection

35 USC 101 provides in pertinent part:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter ... may obtain a patent therefor ...

Both the examiner and the board construed the language "any ... manufacture" as excluding from its ambit claims drawn to a "kit" of parts, reasoning that a "kit" would be a plurality of separate manufactures, not a single manufacture.

The solicitor in his brief recognizes that the Patent and Trademark Office has in the past issued patents containing similar claims drawn to "kits" of interrelated parts. n1 He argues, however, that double patenting decisions by this court, holding that an inventor may obtain only one patent on a single invention, show that this [**12] court has interpreted portions of section 101 in the singular. From this he reasons that the word "manufacture" in section 101 is to be similarly interpreted.

n1 There are copies of several patents in the record which contain "kit" claims exemplifying this prior practice, including patent No. 3,108,803, claiming a basketball goal set kit, patent No. 3,041,778, claiming a puppet kit, patent No. 1,974,838, claiming a toy construction set, and patent No. 3,355,837, also claiming a toy construction set.

We do not find our decisions on double patenting to be applicable to an interpretation of the words "any manufacture" in section 101. Suffice it to say that the two situations are totally dissimilar. In the section 101 "same invention" type double patenting cases, all we were construing was the phrase "a patent therefor."

No other authority has been cited, either by the board or the solicitor, to support the narrow construction which the Patent and Trademark Office now seeks to impose on the words "any manufacture" in section 101.

We do not believe the words in question are to be so narrowly construed. To hold that the words "any manufacture" exclude from their meaning groups [**13] or "kits" of interrelated parts would have the practical effect of not only excluding from patent protection those "kit" inventions which are capable of being claimed as a final assembly (e.g., a splice connector), but also many inventions such as building blocks, construction sets, games, etc., which are incapable of being claimed as a final assembly. We do not believe Congress intended to exclude any invention from patent protection merely because it is a group or "kit" of interrelated parts. We therefore hold that a group or "kit" of interrelated parts is a "manufacture" as that term is used in section 101.

Accordingly, the decision of the board is reversed.

REVERSED

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SHEPARD'S Signal: Positive treatment is indicated

Restrictions: *Unrestricted*

FOCUS(TM) Terms: *No FOCUS terms*

Print Format: *FULL*

Citing Ref. Signal: *Hidden*

SHEPARD'S SUMMARY

Unrestricted *Shepard's* Summary

No subsequent appellate history.

Citing References:

Positive Analyses: **Followed (1)**

Other Sources: Law Reviews (7), Statutes (2), Treatises (23)

PRIOR HISTORY (0 citing references)

(CITATION YOU ENTERED):

In re Venezia, 530 F.2d 956, 1976 CCPA LEXIS 186, 189 U.S.P.Q. (BNA) 149 (C.C.P.A. 1976)

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Dennison Mfg. Co. v. Ben Clements & Sons, Inc., 467 F. Supp. 391, 1979 U.S. Dist. LEXIS 13792, 203 U.S.P.Q. (BNA) 895 (S.D.N.Y. 1979)
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2. **Followed by:**

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7TH CIRCUIT - U.S. DISTRICT COURTS

3. **Cited by:**

Elkay Mfg. Co. v. Ebco Mfg. Co., 1998 U.S. Dist. LEXIS 10697 (N.D. Ill. July 10, 1998)
1998 U.S. Dist. LEXIS 10697

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4. **Cited by:**

Pac-Tec, Inc. v. Amerace Corp., 903 F.2d 796, 1990 U.S. App. LEXIS 7475, 14 U.S.P.Q.2d (BNA) 1871 (Fed. Cir. 1990)

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5. Cited by:
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PATENT & TRADEMARK OFFICE

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11. 35 USCS @ 101
12. 35 USCS @ 112

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13. ARTICLE: *The Expansion of Statutory Subject Matter Under the 1952 Patent Act*+, 37 Akron L. Rev. 217 (2004)
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- and 365(n) of the Bankruptcy Code*, 8 Am. Bankr. Inst. L. Rev. 307 (2000)
15. *NOTE: TO THINE OWN CLAIM BE TRUE: THE FEDERAL CIRCUIT DISASTER IN EXXON CHEMICAL PATENTS, INC. V. LUBRIZOL CORP.*, 21 Cardozo L. Rev. 1335 (2000)
 16. *COMMENT: ARE BEAUREGARD'S CLAIMS REALLY VALID?*, 17 J. Marshall J. Computer & Info. L. 347 (1998)
 17. *ARTICLE: OF TEXT, TECHNIQUE, AND THE TANGIBLE: DRAFTING PATENT CLAIMS AROUND PATENT RULES*, 17 J. Marshall J. Computer & Info. L. 219 (1998)
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21. *3-7 Chisum on Patents @ 7.04*
22. *3-8 Chisum on Patents @ 8.03*
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25. *1-5 CAFC: Practice & Procedure @ 5.04*
26. *9-52 Government Contracts: Law, Admin & Proc @ 52.150*
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32. *1-1 PATENT LAW DIGEST 2400*
33. *1-3 PATENT LAW DIGEST Scope (Cont)*
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